

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* I. L. MICHEL, Minor.

UNPUBLISHED  
September 15, 2016

No. 330631  
Wayne Circuit Court  
Family Division  
LC No. 13-515316-NA

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Before: GADOLA, P.J., and WILDER and METER, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor child, ILM, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

On October 10, 2013, the Department of Health and Human Services (DHHS) removed ILM from the care of respondent and ILM's father. After receiving a referral alleging child neglect, police officers arrived at respondent's residence and knocked on the door repeatedly for about 25 minutes, but received no response. The officers then entered the living room through an open window and found ILM, then two months old, strapped in a car seat on the living room floor and crying. ILM's diaper was filthy and an old bottle sat next to him in the car seat. The officers located respondent and ILM's father in an adjoining bedroom, unconscious and surrounded by drugs and drug paraphernalia. The officers struggled for 15 minutes to wake respondent, who had an empty bottle of Xanax in her hand. The label on the bottle indicated that it had been refilled the day before with 30 doses. Both parents were incoherent and disoriented once awakened. ILM was removed from his parents' custody and placed in the home of his maternal grandmother.

For the next two years, respondent continued to abuse illegal and prescription drugs and failed to participate in any reunification services offered by DHHS. Specifically, after ILM was removed from respondent's care, DHHS offered respondent and the father random drug screenings, inpatient substance abuse therapy, and parenting classes. Both parents agreed to enroll immediately in the recommended services but failed to do so. On October 30, 2013, respondent tested positive for cannabinoids and benzodiazepines, and at a meeting with a DHHS representative on November 13, 2013, respondent admitted to using marijuana, crack cocaine, and Xanax by prescription. A family team meeting was held on December 9, 2013, and DHHS again offered services to respondent and ILM's father. The parents did not enroll in any services offered. On December 19, 2013, DHHS filed a petition seeking temporary custody of ILM, alleging both parents' habitual drug abuse, no source of income for either parent, domestic

violence, and respondent's history of mental illness, including depression, anxiety, and self-mutilation.

Thereafter, respondent consistently refused drug treatment and failed to participate in any offered services. Respondent often missed hearings before the trial court and rarely visited with ILM or called to check on his welfare. At a hearing held January 7, 2014, respondent admitted that she had received a referral for services but had not participated in the program successfully. Respondent thereafter failed to attend dispositional review hearings held March 4, 2014, June 4, 2014, and September 3, 2014.

Respondent attended the dispositional review hearing on December 3, 2014, and indicated that she was ready to start planning to care for ILM. The trial court cautioned respondent that compliance with her plan was essential. Respondent thereafter failed to participate in any aspect of her treatment plan. At the dispositional hearing held March 3, 2015, the trial court again warned respondent that it was "crunch time," and that she needed to start achieving results in treatment or she would face termination of her parental rights. The trial court ordered re-referrals for all services previously offered to respondent.

Respondent attended the seventh dispositional review hearing on June 3, 2015, but admitted that she was still using drugs despite now being pregnant with twins. A DHHS report admitted by the trial court indicated that respondent had received no prenatal care and had been hospitalized since the trial court's last hearing for a drug<sup>1</sup> overdose. The DHHS representative requested an order compelling respondent to participate in inpatient substance abuse treatment. The trial court asked respondent whether she would participate in inpatient treatment if ordered by the trial court, and respondent simply said "no," without explanation. The trial court cautioned respondent that more than 15 months had expired since adjudication and warned respondent to follow through with her service plan to avoid termination.

On July 8, 2015, DHHS filed a supplemental petition seeking termination of respondent's parental rights pursuant to MCL 712.19b(3)(a)(ii) (child deserted for 91 or more days and parent has not sought custody during that period), (c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), (j) (reasonable likelihood of harm if child returned to parent), and (k)(i) (abandonment of young child). The petition alleged that, despite reasonable efforts by DHHS, respondent had failed repeatedly to comply with or benefit from her service plan. Respondent failed to attend the July 31, 2015 pretrial on the supplemental petition. It was later discovered that respondent had given birth to twins on the day of the pretrial. The babies were born prematurely and with THC in their systems, and respondent tested positive for THC, barbiturates, and benzodiazepines at that time.

At the termination hearing held November 20, 2015<sup>2</sup>, the foster care specialist testified that ILM was doing well in his placement with his maternal grandmother. She further testified

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<sup>1</sup> Respondent was suspected of having used cocaine and marijuana on the day of the overdose, as well as ingesting large quantities of Xanax and Norflex.

<sup>2</sup>At the termination hearing, ILM's father voluntarily relinquished his parental rights to ILM.

that respondent had failed to comply with any portion of the court-ordered service plan. Specifically, despite numerous referrals, respondent had never participated in parenting classes, individual therapy, or substance abuse treatment, and each of those services had been terminated early for noncompliance. Respondent had not addressed her drug abuse problem, and had tested positive for marijuana after the prior hearing on September 3, 2015. Respondent also had failed to demonstrate employment or proof of income and had refused to provide an address for her current residence to permit a home assessment.

The only aspect of the service plan in which respondent had participated was visitation, and even in this her participation was poor. From December, 2013, when ILM was first placed with his maternal grandmother, to July, 2015, when the petition for permanent custody was filed, respondent had visited ILM once. After the petition was filed, respondent visited sporadically with ILM, attending about 45 percent of the scheduled visits with no explanation for the missed visits. When she attended visits, the foster care specialist noted that respondent's conduct was appropriate, but that ILM did not know who respondent was and spent most of the visits looking for his maternal grandmother, whom he called "mom." Respondent never brought food or toys with her when she visited, and had supplied nothing for ILM since his removal except for a pair of pajamas.

Respondent testified that she had a long history of substance abuse, and admitted that her drug abuse would negatively affect ILM. She testified that she had refused inpatient treatment because she wanted to handle her substance abuse on her own. She claimed to have successfully stopped using crack cocaine and Xanax, and that she had stopped using marijuana that week. Respondent testified that she continued to refuse drug screens because she knew she would test positive for marijuana, which she had been using as a method of weaning herself off the other drugs. Respondent claimed that since the birth of her twins, she had attended parenting classes and substance abuse classes, but could not identify the agency providing the classes nor did she have proof of attendance. She also was unsure when she started attending the classes. Respondent claimed that she had informed the foster care specialist of her participation in the classes, but when confronted with the fact that the foster care specialist had denied respondent's participation in classes, and the fact that respondent's referral for substance abuse treatment had expired in August, 2015, respondent said that she was "going to have to start getting paperwork for stuff." When asked if she would reconsider inpatient treatment if it were necessary to retain parental rights to ILM, respondent declined.

At the conclusion of the hearing, the trial court found that termination of respondent's parental rights to ILM was warranted pursuant to MCL 712A.19b(c)(i), (g), and (j), and further held that termination of respondent's parental rights was in ILM's best interests.

## I. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that the trial court clearly erred when it found clear and convincing evidence to support termination of her parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). We disagree.

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. MCR 3.977(K); *In re Mason*, 486 Mich

142, 152; 782 NW2d 747 (2010). “A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

To terminate parental rights, the trial court must find that at least one of the statutory grounds set forth in MCL 712A.19b has been established by clear and convincing evidence. MCR 3.977(F); *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). In this case, the trial court properly found that three grounds for termination had been proven by clear and convincing evidence, being MCL 712A.19b(3)(c)(i), (g), and (j). In relevant part, MCL 712A.19b(3) states:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

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(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

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(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court found that termination was proper under MCL 712A.19b(3)(c)(i), which requires clear and convincing evidence that (1) 182 or more days have passed since the trial court’s initial disposition in the matter, (2) conditions leading to the adjudication continued to exist, and that (3) there was no reasonable likelihood that respondent would rectify those conditions within a reasonable time, considering the age of the child. The determination of what is reasonable includes both how long it will take for the parent to improve and how long the child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991).

Here, it is undisputed that more than 182 days had passed from the time the trial court’s initial dispositional order was entered January 8, 2014, until respondent’s rights were terminated on November 20, 2015. During that time, respondent did not comply with any aspect of her

treatment plan. ILM was removed from respondent's care when officers found him left alone, strapped to a carseat, with both of his parents unconscious and surrounded by drug paraphernalia in another room. At the time of ILM's removal, respondent lacked income, employment, and suitable housing. Respondent had an ongoing addiction to both illegal and prescription drugs and admitted that she is an addict. None of these conditions were rectified. There is no evidence to suggest that respondent has overcome her addictions; respondent failed to attend any substance abuse treatment and twice explicitly refused the trial court's offer to order inpatient treatment. Respondent did not explain her failure to attend services, nor did she suggest any change in circumstances that could allow her to be more successful with future treatment. Respondent has never supported ILM financially, and for almost two years failed to obtain suitable housing or a source of income. The trial court therefore properly found that the issues that led the court to exercise jurisdiction over ILM in December, 2013, being respondent's drug abuse, mental health problems, neglect of ILM, lack of suitable housing, and lack of income continued to exist, and that there was no reasonable likelihood that respondent would rectify the conditions within a reasonable time. The trial court therefore did not err in finding clear and convincing evidence to support termination of respondent's parental rights under MCL 712.19b(3)(c)(i).

The trial court also did not clearly err when it found further grounds for termination pursuant to MCL 712A.19b(3)(g). Termination under subsection (g) requires clear and convincing evidence that (1) the respondent failed to provide proper care and custody for the child and (2) there is no reasonable likelihood that the respondent will be able to provide proper care and custody within a reasonable time considering the age of the child. A parent's failure to participate in and benefit from a service plan is evidence of the parent's inability to provide proper care and custody. *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014). Here, the record demonstrates a complete failure by respondent to comply with her court-ordered service plan. Respondent has an ongoing addiction to both illegal and prescription drugs, and ILM was removed from respondent's care as a result of respondent's neglect of ILM stemming from her substance abuse. Respondent refused all services and failed to make any progress overcoming her addictions, addressing her mental health issues, obtaining employment or other income, obtaining housing, or establishing a bond with ILM through visitation. While the trial court proceedings regarding ILM were pending, respondent suffered a drug overdose while pregnant with the twin siblings of ILM. Minimal progress in services coupled with an inability to obtain and maintain suitable housing supports a conclusion that termination is warranted under MCL 712A.19b(3)(g). *In re Trejo*, 462 Mich 341, 362-363; 612 NW2d 407 (2000). The record in this case clearly and convincingly supports a finding that respondent failed to provide proper care and custody, and it is unlikely respondent would be able to provide proper care and custody within a reasonable time.

The trial court also did not err in determining that termination also was warranted pursuant to MCL 712A.19b(3)(j). Termination under subsection (j) requires clear and convincing evidence of "a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." MCL 712A.19b(3)(j). Respondent's clear lack of progress on her treatment plan, her inability to provide housing and income for her child, and her continued untreated substance abuse indicate that ILM would be in danger if returned to respondent's care. See *Trejo*, 462 Mich at 346 n 3. Clear and convincing evidence therefore supported the trial court's conclusion that, based on the

conduct and capacity of respondent, there existed a reasonable likelihood that ILM would be harmed if returned to respondent's care, warranting termination of respondent's parental rights pursuant to MCL 712A.19b(3)(j).

## II. BEST INTERESTS DETERMINATION

Respondent also argues that the trial court clearly erred when it found that termination of her parental rights was in ILM's best interests. Again, we disagree. Once a statutory ground has been proven, the trial court must find, by a preponderance of the evidence, that termination is in the child's best interests before it may terminate parental rights. MCL 712A.19b(5). In considering whether termination of parental rights is in the best interests of the child, a wide variety of factors should be considered including, potentially, the existence of a bond between the child and the parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of a foster home over the parent's home, the parent's compliance with his or her service plan, the parent's visitation history with the child, the child's well-being, and the possibility of adoption. *White*, 303 Mich App at 713-714. This Court reviews a trial court's decision that termination is in the child's best interests for clear error. *Trejo*, 462 Mich at 356-357. Here, the trial court considered a variety of best interests factors, including the opportunity for adoption by ILM's maternal grandmother, the lack of bond between ILM and respondent, ILM's need for permanence and stability, especially at such a critical stage of development, respondent's chaotic life and lack of stable housing or income, respondent's all-pervasive drug addiction, ILM's non-existent relationship with his siblings, and the length of time ILM had already been in foster care, and concluded that termination was in ILM's best interests. We reject respondent's contention that the trial court failed to consider the bond between her and ILM. The trial court considered the evidence regarding the relationship between respondent and ILM, and found that no relationship existed.

Respondent also unpersuasively argues that the trial court terminated her rights prematurely. Respondent had ample opportunity to correct the problems that led to the termination of her rights in the almost two years that ILM was in foster care. The trial court repeatedly granted respondent additional time to make progress, yet respondent failed to comply in any way with her court-ordered service plan, despite requesting and receiving re-referrals after her initial services had been terminated for noncompliance.

Respondent further argues that ILM's relative placement weighs strongly against termination. If a child is living with relatives when the termination hearing occurs, the trial court must explicitly consider that factor in determining if termination is in the child's best interests. See *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). Here, the trial court specifically considered ILM's placement with his maternal grandmother and found termination of respondent's parental rights to be in ILM's best interests, specifically noting that avoiding disruption at a critical stage of development was in ILM's best interests. The trial court therefore did not clearly err in finding that termination was in ILM's best interests.

## III. REASONABLE EFFORTS BY DHHS

Lastly, respondent claims that the trial court erred when it terminated her parental rights because DHHS failed to make reasonable efforts to reunify respondent and ILM. We note that

the time for objecting to a service plan or to otherwise contend that a service plan is inadequate is when the trial court adopts the service plan. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012); *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000). Respondent failed to object to the service plan or to otherwise indicate before the trial court that the service plan provided was inadequate. This issue is therefore unpreserved.

In any event, we disagree that DHHS failed to make reasonable efforts to reunify respondent and ILM. Generally, DHHS must make reasonable efforts to reunify a child with his or her family before the court may order termination of parental rights, MCL 712A.19a(2); *Frey*, 297 Mich App at 247. Reasonable efforts include DHHS making a referral for services and attempting to engage the family in services. *In re JL*, 483 Mich 300, 322 n 15; 770 NW2d 853 (2009). Generally, a petitioner may satisfy the reasonable effort requirement by adopting and implementing a service plan. *Mason*, 486 Mich at 156. But although DHHS must make reasonable efforts to provide services toward reunification, respondent has a commensurate responsibility to participate in the services that are offered. See *Frey*, 297 Mich App at 248.

Here, DHHS organized a family planning meeting with respondent prior to filing a petition for temporary custody, and offered parenting classes and substance abuse counseling. Respondent failed to participate in the offered services. After the trial court authorized the initial custody petition, a service plan was offered including DHHS-funded substance abuse treatment, parenting classes, individual therapy, psychological testing, medications reviews, and random drug screens. Respondent failed to participate in any of the services offered, and each respective referral eventually was cancelled for noncompliance. Respondent also failed to take advantage of housing assistance and employment assistance offered by DHHS. After more than a year of complete nonparticipation, DHHS requested re-referrals for all services to allow respondent another opportunity to comply with her initial service plan. These referrals also eventually expired due to respondent's failure to participate in the offered services. Twice respondent was offered inpatient substance abuse treatment, and twice declined the offered treatment. It is clear that DHHS made every reasonable effort to provide respondent with appropriate services, and respondent simply failed to meet her commensurate responsibility to participate in and benefit from those services<sup>3</sup>. The trial court therefore did not err when it determined that DHHS had made reasonable efforts to avoid termination.

Affirmed.

/s/ Michael F. Gadola  
/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter

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<sup>3</sup>To the extent respondent argues that her failure was due to unspecified "special limitations or disabilities," we note that respondent did not make a single request for accommodations in the lower court nor object to any aspect of her service plan. Nothing in the record suggests that respondent had any special needs that DHHS was aware of or failed to address.

